



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

MOP/161843

PRELIMINARY RECITALS

Pursuant to a petition filed November 11, 2014, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Ozaukee County Department of Social Services in regard to Medical Assistance, a hearing was held on December 16, 2014, at Port Washington, Wisconsin.

The issue for determination is whether Petitioner was overpaid \$1,264.06 in Medical Assistance from May 1, 2013 through August 31, 2014.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703

By: Pahoua Vang

Ozaukee County Department of Social Services
121 W. Main Street
PO Box 994
Port Washington, WI 53074-0994

ADMINISTRATIVE LAW JUDGE:

Corinne Balter

Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Ozaukee County. From May 1, 2013 through August 31, 2014 Petitioner's household size was 2.

2. The petitioner was over-issued BC Plus benefits for the period from May 1, 2013 through September 30, 2013 in the amount of \$595.01. This overpayment is contained in claim number [REDACTED]. The overpayment was due to "client error."
 - a. From May 1, 2013 through July 31, 2013 the petitioner's monthly gross income was \$2,235.65 consisting of \$1,659.08 in earned employment income and \$576.57 in unearned income.
 - b. From August 1, 2013 through August 31, 2013 the petitioner's monthly gross income was \$2,717.05 consisting of \$2,140.48 in earned employment income and \$576.57 in unearned income.
 - c. From September 1, 2013 through September 30, 2013 the petitioner's monthly gross income was \$2,236.05 consisting of \$1,659.48 in earned employment income and \$576.57 in unearned income.
3. The petitioner was over-issued BC Plus benefits for the period from October 1, 2013 through January 1, 2014 in the amount of \$350.00. This overpayment is contained in claim number [REDACTED]. The overpayment was due to "client error."
 - a. From October 1, 2013 through October 31, 2013 the petitioner's monthly gross income was \$1,971.09 consisting of \$1,394.52 in earned employment income and \$576.57 in unearned income.
 - b. From November 1, 2013 through November 30, 2013 the petitioner's monthly gross income was \$1,981.22 consisting of \$1,404.65 in earned employment income and \$576.57 in unearned income.
 - c. From December 1, 2013 through December 31, 2013 the petitioner's monthly gross income was \$2,123.11 consisting of \$1,546.54 in earned employment income and \$576.57 in unearned income.
 - d. From January 1, 2014 through January 31, 2014 the petitioner's monthly gross income was \$2,195.42 consisting of \$1,618.85 in earned employment income and \$576.57 in unearned income.
4. The petitioner was over-issued BC Benefits for the period from April 1, 2014 through August 31, 2014 in the amount of \$319.05. This overpayment is contained in claim number [REDACTED]. The overpayment was due to "client error."
 - a. The petitioner's monthly gross income in April 2014 was \$1,541.87 consisting of earned employment income.
 - b. The petitioner's monthly gross income in May 2014 was \$1,580.72 consisting of earned employment income.
 - c. The petitioner's monthly gross income in June 2014 was \$1,216.00 consisting of earned employment income.
 - d. The petitioner's monthly gross income in July 2014 was \$1,256.85 consisting of earned employment income.
 - e. The petitioner's monthly gross income in August 2014 was \$2,075.36 consisting of earned employment income.
5. On October 21, 2014 the agency mailed the petitioner a system generated overpayment notice for claim numbers [REDACTED], [REDACTED], and [REDACTED]. This system generated notice stated that Petitioner's overpayments were greater than the overpayments the agency later manually calculated. These manual notices used the state wage match averages to calculate the overpayment amounts. However, on November 4, 2014 the petitioner provided actual paystubs

containing her earnings at [REDACTED] from May 1, 2013 through May 31, 2014 and [REDACTED] from May 1, 2013 through August 31, 2014.

6. On November 10, 2014 the agency sent the petitioner manual overpayment notices for claim numbers [REDACTED], [REDACTED], and [REDACTED]. These new notices stated the correct amount overpaid for the three time periods. These notices are consistent with my findings above.
7. This overpayment occurred because the petitioner's actual earnings were greater than what she reported to the agency. The petitioner did not report these earnings to the agency.

DISCUSSION

The Department of Health Services (Department) is legally required to seek recovery of incorrect BCP payments when a recipient engages in a misstatement or omission of fact on a BCP application, or fails to report income information, which in turn gives rise to a BCP overpayment:

49.497 Recovery of incorrect medical assistance payments. (1) (a) The department may recover any payment made incorrectly for benefits provided under this subchapter or s.49.665 if the incorrect payment results from any of the following:

1. A misstatement or omission of fact by a person supplying information in an application for benefits *under this subchapter* or s.49.665.

2. The failure of a Medical Assistance or Badger Care recipient or any other person responsible for giving information on the recipient's behalf to report the receipt of income or assets in an amount that would have affected the recipient's eligibility for benefits.

3. ***The failure of a Medical Assistance or Badger Care recipient or any other person responsible for giving information on the recipient's behalf to report any change in the recipient's financial or nonfinancial situation or eligibility characteristics that would have affected the recipient's eligibility for benefits or the recipient's cost-sharing requirements.***

- (b) The department's right of recovery is against any medical assistance recipient to whom or on whose behalf the incorrect payment was made. The extent of recovery is limited to the amount of the benefits incorrectly granted. ...

(Emphasis added)

Wis. Stat. §49.497(1). BCP is in the same subchapter as §49.497. See also, *BCP Eligibility Handbook(BCPEH)*, §28.1, online at <http://www.emhandbooks.wi.gov/bcplus/> :

28.1 OVERPAYMENTS.

An "overpayment" occurs when BC+ benefits are paid for someone who was not eligible for them or when BC+ premium calculations are incorrect. The amount of recovery may not exceed the amount of the BC+ benefits incorrectly provided. Some examples of how overpayments occur are:

1. **Concealing or not reporting income.**
2. **Failure to report a change in income.**
3. Providing misinformation at the time of application regarding any information that would affect eligibility.

(Emphasis added).

28.2 RECOVERABLE OVERPAYMENTS.

Initiate recovery for a BC+ overpayment, if the incorrect payment resulted from one of the following:

1. Applicant /Member Error

Applicant/Member error exists when an applicant, member or any other person responsible for giving information on the member's behalf unintentionally misstates (financial or non-financial) facts, which results in the member receiving a benefit that s/he is not entitled to or more benefits than s/he is entitled to. Failure to report non-financial facts that impact eligibility or cost share amounts is a recoverable overpayment.

2. Fraud. ...

BCPEH, §28.1 – 28.2.

The overpayment must be caused by the client's error. Overpayments caused by agency error are not recoverable.

For administrative hearings, the standard of proof is the preponderance of the evidence. Also, in a hearing concerning the propriety of an overpayment determination, the county agency has the burden of proof to establish that the action taken by the county was proper given the facts of the case. The petitioner must then rebut the county agency's case and establish facts sufficient to overcome the county agency's evidence of correct action.

In this case, the county agency presented a well-organized and documented case to establish that it was correctly pursuing an MA overpayment against the petitioner. In this case there are three separate overpayments.

Claim Number [REDACTED]; May 1, 2013 through September 30, 2013; \$595.01

May 1, 2013 through July 31, 2013; \$317

I have reviewed the petitioner's paystubs and the budgets. I find that the agency correctly determined that the petitioner's monthly gross income during this time period was \$2,235.65 consisting of \$1,659.08 in earned employment income and \$576.57 in unearned income. The agency calculated this monthly gross income based upon what Petitioner originally reported to the agency with the additional income from [REDACTED]. The additional income was re-determined using paystubs from this specific time period. Had the agency used the state wage match records, the petitioner's monthly gross income would have been higher, and the overpayment would have been greater.

A parent with income over 133% of the federal poverty level (FPL) was required to pay a premium for BC Plus coverage. *BCPEH Release 13-01*, § 19.2, viewable online at <http://www.emhandbooks.wisconsin.gov/bcplus/bcplus.htm> (last viewed January 2015). 133% of the FPL for a household of two was \$1,719.03. *Id.* at § 48.1.2. For non-pregnant, non-disabled parents with income over 133% of the FPL, the BC Plus premium was five to nine percent of their income based on a sliding scale. *Id.* at § 19.2.

In this case the petitioner was a non-pregnant, non-disabled parent. Her two person household income during this time period was \$2,235.65. The sliding scale premium for this income was 4.9 percent. *Id.* at § 48.1.2. 4.9 % of 2,235.65 is \$109. Thus, the petitioner's premium during this three month time period

of June, July, and August 2013 should have been \$109. The total amount of overpayment is thus \$327. The agency has calculated this amount of the overpayment to be \$317. This appears to be an agency clerical error that benefits the petitioner. For that reason, I find that the agency correctly calculated the overpayment during this time period in the amount of \$317.

August 1, 2013 through August 31, 2013; \$169.01

I have reviewed the petitioner's paystubs and the budgets. I find that the agency correctly determined that the petitioner's monthly gross income during this time period was \$2,717.05 consisting of \$2,140.48 in earned employment income and \$576.57 in unearned income. The agency calculated this monthly gross income based upon what Petitioner originally reported to the agency with the additional income from [REDACTED]. The additional income was re-determined using paystubs from this specific time period. Had the agency used the state wage match records, the petitioner's monthly gross income would have been higher, and the overpayment would have been greater.

A parent with household gross income was over 200% of the federal poverty level (FPL) was not eligible for BC Plus during this time period. *Id.* § at 19.2. A child in a household with income above 200% of the FPL was eligible for BC Plus coverage with a \$10 premium. *Id.* § at 19.1. In August 2013 200% of the FPL was \$2585.00. *Id.* at § 48.1.2.

In August 2013 the petitioner income of \$2,717.05 was above 200% of the FPL or \$2,585.00. This causes the Petitioner to have been ineligible for BC Plus during this time period. The petitioner's child would have had a \$10 premium. The net paid by Medicaid and net capitation for this month was \$159.01. This amount is the overpayment amount with respect to the petitioner. There is an additional \$10 overpayment with respect to the petitioner's child for a total overpayment amount of \$169.01 in August 2013.

September 1, 2013 through September 30, 2013; \$109

I have reviewed the petitioner's paystubs and the budgets. I find that the agency correctly determined that the petitioner's monthly gross income during this time period was \$2,236.05 consisting of \$1659.48 in earned employment income and \$576.57 in unearned income. The agency calculated this monthly gross income based upon what Petitioner originally reported to the agency with the additional income from [REDACTED]. The additional income was re-determined using paystubs from this specific time period. Had the agency used the state wage match records, the petitioner's monthly gross income would have been higher, and the overpayment would have been greater.

A parent with income over 133% of the federal poverty level (FPL) was required to pay a premium for BC Plus coverage. *BCPEH Release 13-01*, § 19.2, viewable online at <http://www.emhandbooks.wisconsin.gov/bcplus/bcplus.htm> (last viewed January 2015). 133% of the FPL for a household of two was \$1,719.03. *Id.* at § 48.1.2. For non-pregnant, non-disabled parents with income over 133% of the FPL, the BC Plus premium was five to nine percent of their income based on a sliding scale. *Id.* at § 19.2.

In this case the petitioner was a non-pregnant, non-disabled parent. Her two person household income during this time period was \$2,236.05. The sliding scale premium for this income was 4.9 percent. *Id.* at § 48.1.2. 4.9 % of 2,235.65 is \$109. Thus, the petitioner's premium for this month should have been \$109. This is the amount of overpayment for this time period.

Claim Number [REDACTED]; October 1, 2013 through January 31, 2014; \$350.00

October 2013; \$78

I have reviewed the petitioner's paystubs and the budgets. I find that the agency correctly determined that the petitioner's monthly gross income during this time period was \$1,971.09 consisting of \$1394.52 in earned employment income and \$576.57 in unearned income. The agency calculated this monthly gross income based upon what Petitioner originally reported to the agency with the additional income from [REDACTED]. The additional income was re-determined using paystubs from this specific time period. Had the agency used the state wage match records, the petitioner's monthly gross income would have been higher, and the overpayment would have been greater.

A parent with income over 133% of the federal poverty level (FPL) was required to pay a premium for BC Plus coverage. *BCPEH Release 13-01*, § 19.2, viewable online at <http://www.emhandbooks.wisconsin.gov/bcplus/bcplus.htm> (last viewed January 2015). 133% of the FPL for a household of two was \$1,719.03. *Id.* at § 48.1.2. For non-pregnant, non-disabled parents with income over 133% of the FPL, the BC Plus premium was five to nine percent of their income based on a sliding scale. *Id.* at § 19.2.

In this case the petitioner was a non-pregnant, non-disabled parent. Her two person household income during this time period was \$1,971.09. The sliding scale premium for this income was 4.0 percent. *Id.* at § 48.1.2. 4.0 % of \$1,971.09 is \$78. Thus, the petitioner's premium during October 2013 should have been \$78. This is the overpayment amount.

November 2013; \$78

I have reviewed the petitioner's paystubs and the budgets. I find that the agency correctly determined that the petitioner's monthly gross income during this time period was \$1,981.22 consisting of \$1,404.65 in earned employment income and \$576.57 in unearned income. The agency calculated this monthly gross income based upon what Petitioner originally reported to the agency with the additional income from [REDACTED]. The additional income was re-determined using paystubs from this specific time period. Had the agency used the state wage match records, the petitioner's monthly gross income would have been higher, and the overpayment would have been greater.

A parent with income over 133% of the federal poverty level (FPL) was required to pay a premium for BC Plus coverage. *BCPEH Release 13-01*, § 19.2, viewable online at <http://www.emhandbooks.wisconsin.gov/bcplus/bcplus.htm> (last viewed January 2015). 133% of the FPL for a household of two was \$1,719.03. *Id.* at § 48.1.2. For non-pregnant, non-disabled parents with income over 133% of the FPL, the BC Plus premium was five to nine percent of their income based on a sliding scale. *Id.* at § 19.2.

In this case the petitioner was a non-pregnant, non-disabled parent. Her two person household income during this time period was \$1,981.22. The sliding scale premium for this income was 4.0 percent. *Id.* at § 48.1.2. 4.0 % of \$1,981.22 is \$78. Thus, the petitioner's premium during November 2013 should have been \$78. This is the overpayment amount.

December 2013; \$95

I have reviewed the petitioner's paystubs and the budgets. I find that the agency correctly determined that the petitioner's monthly gross income during this time period was \$2,123.11 consisting of \$1,546.54 in earned employment income and \$576.57 in unearned income. The agency calculated this monthly gross income based upon what Petitioner originally reported to the agency with the additional income from [REDACTED]. The additional income was re-determined using paystubs from this specific time period. Had the agency used the state wage match records, the petitioner's monthly gross income would have been higher, and the overpayment would have been greater.

A parent with income over 133% of the federal poverty level (FPL) was required to pay a premium for BC Plus coverage. *BCPEH Release 13-01*, § 19.2, viewable online at <http://www.emhandbooks.wisconsin.gov/bcplus/bcplus.htm> (last viewed January 2015). 133% of the FPL for a household of two

was \$1,719.03. *Id.* at § 48.1.2. For non-pregnant, non-disabled parents with income over 133% of the FPL, the BC Plus premium was five to nine percent of their income based on a sliding scale. *Id.* at § 19.2.

In this case the petitioner was a non-pregnant, non-disabled parent. Her two person household income during this time period was \$2,123.11. The sliding scale premium for this income was 4.5 percent. *Id.* at § 48.1.2. 4.5 % of \$2,123.11 is \$95. Thus, the petitioner's premium during December 2013 should have been \$95. This is the overpayment amount.

January 2014; \$99

I have reviewed the petitioner's paystubs and the budgets. I find that the agency correctly determined that the petitioner's monthly gross income during this time period was \$2,195.42 consisting of \$1,618.85 in earned employment income and \$576.57 in unearned income. The agency calculated this monthly gross income based upon what Petitioner originally reported to the agency with the additional income from [REDACTED]. The additional income was re-determined using paystubs from this specific time period. Had the agency used the state wage match records, the petitioner's monthly gross income would have been higher, and the overpayment would have been greater.

A parent with income over 133% of the federal poverty level (FPL) was required to pay a premium for BC Plus coverage. *BCPEH Release 13-01*, § 19.2, viewable online at <http://www.emhandbooks.wisconsin.gov/bcplus/bcplus.htm> (last viewed January 2015). 133% of the FPL for a household of two was \$1,719.03. *Id.* at § 48.1.2. For non-pregnant, non-disabled parents with income over 133% of the FPL, the BC Plus premium was five to nine percent of their income based on a sliding scale. *Id.* at § 19.2.

In this case the petitioner was a non-pregnant, non-disabled parent. Her two person household income during this time period was \$2,195.42. The sliding scale premium for this income was 4.5 percent. *Id.* at § 48.1.2. 4.5 % of \$2,195.42 is \$99. Thus, the petitioner's premium during January 2014 should have been \$96. This is the overpayment amount.

Claim Number [REDACTED]; April 1, 2014 through August 31, 2014; \$319.05

April 1, 2014 through May 31, 2014; \$400.21

I have reviewed the petitioner's paystubs and the budgets. I find that the agency correctly determined that the petitioner's monthly gross income in April 2014 was \$1,541.87 consisting of earned employment income. I find that the agency correctly determined that the petitioner's monthly gross income in May 2014 was \$1,580.72 consisting of earned employment income. The agency calculated the monthly gross income for April and May 2014 using paystubs from [REDACTED]. Had the agency used the state wage match records, the petitioner's monthly gross income would have been higher, and the overpayment would have been greater.

In April 2014 BC Plus eligibility rules changed. Wis. Stat. § 49.45(23); 2013 Wisconsin Act 116, § 29, for effective date; *BadgerCare Plus Eligibility Handbook (BCPEH)*, § 2.1, at <http://www.emhandbooks.wisconsin.gov/bcplus/bcplus.htm> (viewed in January 2015). The program's nonfinancial eligibility standards were broadened effective April 1, 2014, to include adults who do not have minor children in their home. *Id.* However, the income eligibility for adults with children in the home decreased. *Id.* Any adult with an adjusted gross income over 100% of the FPL was not eligible for BC Plus. Wis. Stat. § 49.45(23)(a); *BCPEH*, § 16.1. 100% FPL for a household of 2 is \$1,310.83. *Id.*, § 50.1.

In this case the petitioner's income was over 100% of the FPL for April and May 2014. She was thus ineligible for BC Plus coverage. The net paid and net capitation for this period was \$400.21. This is the overpayment amount.

June 1, 2014 through July 31, 2014; \$0

I have reviewed the petitioner's paystubs and the budgets. I find that the agency correctly determined that the petitioner's monthly gross income in June 2014 was \$1,216.00 consisting of earned employment income. I find that the agency correctly determined that the petitioner's monthly gross income in July 2014 was \$1,256.85 consisting of earned employment income. The agency calculated the monthly gross income for June and July 2014 using paystubs from [REDACTED] [REDACTED]. Had the agency used the state wage match records, the petitioner's monthly gross income would have been higher, and the overpayment would have been greater.

In June and July 2014 a parent whose income was below 100% of the FPL was eligible for BC Plus coverage. *BCPEH*, § 16.1. 100% of the FPL for a household of two was \$1,310.83. *Id.*, § 50.1. The petitioner's income was below this level, and thus she was eligible for BC Plus. Therefore, there is no overpayment for this time period.

August 2014; 183.84

I have reviewed the petitioner's paystubs and the budgets. I find that the agency correctly determined that the petitioner's monthly gross income in August 2014 was \$2,075.36 consisting of earned employment income. The agency calculated the monthly gross income using paystubs from [REDACTED] [REDACTED]. Had the agency used the state wage match records, the petitioner's monthly gross income would have been higher, and the overpayment would have been greater.

Effective April 2014 the BC Plus income eligibility for adults with children in the home tightened. *Id.* Any adult with an adjusted gross income over 100% of the FPL was not eligible for BC Plus. Wis. Stat. § 49.45(23)(a); *BCPEH*, § 16.1. 100% FPL for a household of 2 is \$1,310.83. *Id.*, § 50.1.

In this case the petitioner's income was over 100% of the FPL, and she was not eligible for BC Plus in August 2014. The net paid and net capitation for this period was \$183.84. This is the overpayment amount.

Reduction of Overpayment Amount; (265.00)

The agency correctly reduced the overpayment amount by \$265.00 because the petitioner paid \$265.00 during this period. Thus, the total overpayment was \$584.05, which was correctly reduced by \$265.00 making \$319.05 the total amount that the petitioner owes.

All Claim Numbers

I note that this overpayment was caused by the petitioner failing to report her employment and income with [REDACTED] [REDACTED]. The petitioner began working at [REDACTED] [REDACTED] in October 2012. The first time she reported this job to the agency was in December 2013 after the agency sent her notice that they were closing her case for failure to provide verification. The petitioner then failed to report when her income increased changing her BC Plus eligibility. The petitioner's was required to report any change in her income that would affect her BC Plus eligibility status. She failed to do this, and the agency is now required to establish and collect the overpayment.

CONCLUSIONS OF LAW

The agency correctly determined that the petitioner was overpaid \$1,264.06 in BC Plus Medical Assistance benefits from May 1, 2013 through August 31, 2014.

THEREFORE, it is

ORDERED

That the petition is dismissed.

REQUEST FOR A REHEARING

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

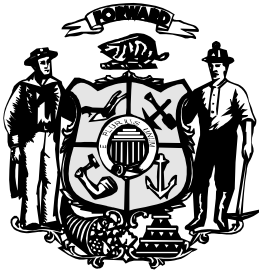
APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, Madison, Wisconsin 53703, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Milwaukee,
Wisconsin, this 14th day of January, 2015

\sCorinne Balter
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on January 14, 2015.

Ozaukee County Department of Social Services
Public Assistance Collection Unit
Division of Health Care Access and Accountability